

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 2-7 and 9-22 are pending in this application. Claims 2-7 and 9-22 are rejected. Claim 2 has been cancelled. Claims 3 and 22 have been amended.

Claim 16 stands rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically, the Examiner cites that the limitation “events triggering recalculation” has insufficient antecedent basis. The dependency of claim 16 has been amended and is now dependent on claim 15. Hence, there is sufficient antecedent basis for the limitation “events triggering recalculation.”

Claims 2 and 22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Tobagi et al., U.S. Patent No. 5,381,413 (“Tobagi”). Claim 2 has been canceled without prejudice. Claim 22 has been amended to include the limitations of allocating communications bandwidth to communications connection based on at least one set of priorities in which said set of priorities includes at least one of: how fast user connections can receive information, which part of a document is being transmitted, user identity and stored indicia indicating the importance of the document. As discussed below, Tobagi et al. fail to disclose or suggest the set of priorities as claimed.

Claims 3-7, 9-13 and 17-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tobagi. This rejection is respectfully traversed.

Tobagi is directed to a data throttling system for a communications network. A throttler at a station controls the transmission of data packets onto a shared transmission medium. The throttler controls the transmission by use of a token and basis transmission

on the type of data to be transmitted. For example, the throttler allows for the transmission of higher prioritized data packets before the transmission of lower prioritized data packets.

Independent claim 3 is directed to a computer apparatus for allocating communications bandwidth to a plurality of user connections, comprising a bus, at least one communications interface connected to said bus, and a processor connected to said bus. The processor is configured to allocate communications bandwidth to the user connections serviced by said at least one communications interface based on at least one communications interface based on at least one set of priorities, in which one set of priorities comprises priorities based on type of information being retrieved in which the type of information includes at least one of information in HTML format, information in a style sheet format, information in a GIF image format and information in a JPEG image format.

Although the Examiner admits that Tobagi does not explicitly disclose that the type of information includes at least one of information in HTML format, information in a style sheet format, information in a GIF image format and information in a JPEG image format, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi in order to enable Tobagi's system to handle most common information formats. The applicant respectfully disagrees with the Examiner's conclusion.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce **the claimed invention** where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also MPEP 2143.01. It should be recognized that the fact that the prior art could be modified so as to result in the combination defined by the claims would not have made the modification obvious unless the prior art suggests the desirability of the modification. *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). Recognizing, after the fact, that such a modification would provide an improvement or advantage, without suggestion thereof by the prior art, rather than dictating a conclusion of obviousness, is an indication of improper application of hindsight considerations. Simplicity and hindsight are not proper criteria for resolving obviousness. *In re Warner*, 379 f.2d 1011, 154, USPQ 173 (CCPA 1967).

The Examiner fails to cite where Tobagi teaches or suggests that the type of information being retrieved includes at least one of information in HTML format, information in a style sheet format, information in a GIF image format and information in a JPEG image format. As a result, the Examiner has failed to meet the *prima facie* burden of obviousness. The Applicant respectfully requests that the Examiner withdraw the rejection.

Independent claim 4 is directed to a computer apparatus for allocating communications bandwidth to a plurality of user connections, comprising a bus, at least one communications interface connected to the bus and a processor connected to the bus. The processor is configured to allocate communications bandwidth to the user connections serviced by the at least one communications interface based on at least one

set of priorities, in which the one set of priorities comprises priorities based on how fast user connections can receive information.

Although the Examiner admits that Tobagi does not teach that one set of priorities comprises priorities based on how fast user connection can receive information, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi by allocating bandwidth based on the speed of a user connection in order to make the system run well in an environment with different connection speeds. The applicant respectfully disagrees with the Examiner's conclusion.

Again, as stated for claim 3, the Examiner has failed to met his prima facie burden of obviousness. The Examiner has not provided a reference or identified in Tobagi disclosure that would teach, suggest or motivate one skilled in the art to modify Tobagi.

Independent claim 5 is directed to a computer apparatus for allocating communications bandwidth to a plurality of user connection, comprising a bus, at least one communications interface connected to the bus and a processor connected to the bus. The processor is configured to allocate communications bandwidth to the user connections serviced by the at least one communications interface based on at least one set of priorities, in which the one set of priorities comprises priorities based on which part of a document is being transmitted.

Although the Examiner admits that Tobagi does not teach that one set of priorities comprises priorities based on which part of a document is being transmitted, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi in order to make Tobagi's system more universal. The applicant respectfully disagrees with the Examiner's conclusion.

Again, as stated for claim 3, the Examiner has failed to met his prima facie burden of obviousness by providing a reference that would teach, suggest or motivate one skilled in the art to modify Tobagi.

Independent claim 6 is directed to a computer apparatus for allocating communications bandwidth to a plurality of user connection, comprising a bus, at least one communications interface connected to the bus and a processor connected to the bus. The processor is configured to allocate communications bandwidth to the user connections serviced by the at least one communications interface based on at least one set of priorities, in which the one set of priorities comprises priorities based on user identity.

Although the Examiner admits that Tobagi does not teach that one set of priorities comprises priorities based on user identity, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi by allocating bandwidth based on the speed of a user connection in order to make the system more universal. The applicant respectfully disagrees with the Examiner's conclusion.

Again, as stated for claim 3, the Examiner has failed to met his prima facie burden of obviousness by providing a reference that would teach, suggest or motivate one skilled in the art to modify Tobagi.

Independent claim 7 is directed to a computer apparatus for allocating communications bandwidth to a plurality of user connection, comprising a bus, at least one communications interface connected to the bus and a processor connected to the bus. The processor is configured to allocate communications bandwidth to the user connections serviced by the at least one communications interface based on at least one

set of priorities, in which the one set of priorities comprises priorities based on stored indicia indicating importance of the document.

Although the Examiner admits that Tobagi does not teach that one set of priorities comprises priorities based on stored indicia indicating the importance of the document, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi to transmit an important document in a shorter time. The applicant respectfully disagrees with the Examiner's conclusion.

Again, as stated for claim 3, the Examiner has failed to met his prima facie burden of obviousness by providing a reference that would teach, suggest or motivate one skilled in the art to modify Tobagi.

Independent claim 9 is directed to a computer apparatus for allocating communications bandwidth to a plurality of server connections, comprising a bus, at least one communications interface connected to said bus, and a processor connected to the bus. The processor is configured to allocate communications bandwidth to server connections serviced by the at least one communications interface based on at least one set of priorities, in which one set of priorities comprises priorities based on the state of application processes running on said processor.

Although the Examiner admits that Tobagi does not teach that one set of priorities comprises priorities based on the state of the application process, the Examiner states that one of ordinary skill in the art would have been motivated to modify Tobagi so that priorities based on state of the application process in order to enhance the functionality of Tobagi's system. The applicant respectfully disagrees with the Examiner's conclusion.

Again, as stated for claim 3, the Examiner has failed to met his prima facie burden of obviousness by providing a reference or citation to Tobagi that would teach, suggest or motivate one skilled in the art to modify Tobagi.

The Examiner rejects claims 10 and 11under the same rationale stated for claim 9. Since claims 10 and 11 are dependent on claim 9, claims 10 and 11 are believed allowable for the same reasons stated for claim 9.

Independent claim 12 is directed to a method of operating a server on a network, comprising the steps of providing an element for allocating communications bandwidth at a server to a plurality of user connections based on at least one set of priorities.

Although the Examiner admits that Tobagi does not explicitly show that stations can be user systems, the Examiner states it would have been obvious that using stations 13 as user systems depends on the environment. The applicant respectfully disagrees with the Examiner's conclusion.

The Examiner has cited of Baugher without providing any motivation to combine Tobagi and Baugher. The Examiner is required to identify a particular basis in the applied art upon which to predicate the conclusion that one having ordinary skill in the art would have been realistically motivated to combine applied references to arrive at the claimed invention. **In re Mayne**, 41 USPQ2d 1451 (Fed. Cir. 1997). Moreover, there is no shortcoming in either Baugher et al. or the cited art identified by the Examiner that would lead a person of ordinary skill in the art to look to the other for a solution. Therefore the Examiner has failed to establish prima facie obviousness, and a rejection under 35 U.S.C. §103 is improper.

Again, as stated for claim 3, the Examiner has failed to met his *prima facie* burden of obviousness and therefore the Applicant requests that the Examiner provides an appropriate rationale to motivate one skilled in the art to modify Tobagi.

The Examiner rejects claim 13 for the same rationale stated for claims 3-7. Claim 13 is believed allowable for the same reasons as stated for claims 3-7.

The Examiner rejects claims 17, 19 and 21 for similar reasons as stated for claim 12. Claims 17, 19 and 21 are believed allowable for the same reasons as stated for claim 12.

The Examiner rejects claim 18 for the same rationale stated for claim 9. Claim 18 is believed allowable for the same reasons cited for claim 9.

The Examiner rejects claim 20 for the same rationale stated for claims 9 and 13. Claim 18 is believed allowable for the same reasons cited for claims 9 and 13.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tobagi et al. in view of Hahne et al. (U.S. Patent No. 5,115,430). This rejection is traversed. Claim 14 is dependent on claim 12 and is patentable for the same reasons stated for claim 12. Moreover, the Examiner fails to provide proper motivation to combine the references.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tobagi et al. in view of Shaffer et al. (U.S. Patent No. 5,673,253). This rejection is traversed. Claims 15 and 16 are dependent on claim 12 and are patentable for the same reasons stated for claim 12. Moreover, the Examiner fails to provide proper motivation to combine the references.

In view of the above, it is believed that this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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